IN THE COURT OF THE ADDITIONAL SUB JUDGE, KOTTAYAM.
Present :- Sri. Sudheesh Kumar S., Addl. Sub Judge.

Friday 18th September 2020
27th Bhadra, 1942.

O. S.No.7/2019

Plaintiffs:-

1. St.Mary's Church(Cathedral), Manarcadu represented by its Vicar Fr. Laiju Markose @ James Markose, S/o Markose, aged 40 years, residing at Padiyara House, Panachikkadu Village, Pathamuttam Kara, Pathamuttam P.O., Kottayam Taluk, Pin 686532.

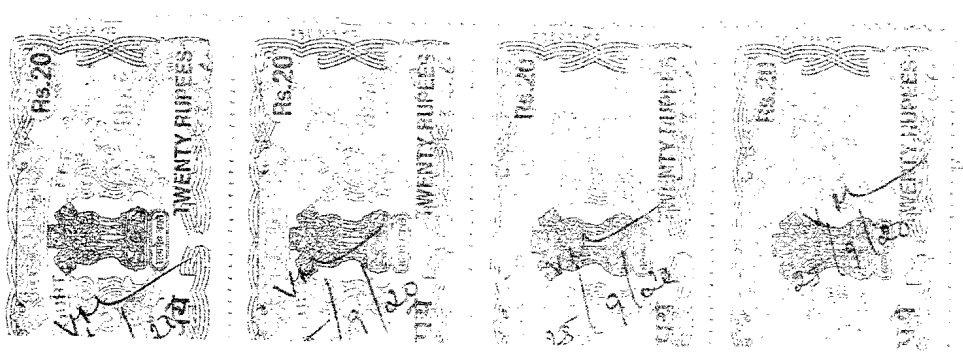
2. Fr. Laiju Markose, S/o Markose, aged 40 years, residing at Padiyara House, Panachikkadu Village, Pathamuttam Kara, Pathamuttam P.O., Kottayam Taluk, Pin 686532.

3. V.V.Mathew, aged 61 years, S/o Varkey, residing at Vadakkekara House, Manarcadu Village, Maalam Kara, Maalam P.O., Kottayam Taluk, Pin 686015.

4. Santhosh George, S/o Late Fr. George Moolayil, aged 49 years, residing at Moolayil House, Manarcadu Village, Kuzhipurayidam Kara, Manarcadu P.O., Kottayam Taluk, Pin 686019.

5. M.A.Cherian, S/o Andrews, aged 87 years, residing at Maniala House, Manarcadu Village, Areeparampu Kara, Areeparampu P.O., Kottayam Taluk, Pin 686501.

By Adv. M.C.Scariah



ef ₹ 70.00/-

Defendants:-

1. Fr.E.T.Kuriakose Core Episcopa, aged 80 years residing at Ittiadathu House, Manarcadu Village, Maalam Kara, Maalam P.O., Kottayam Taluk.

2. George Mathew, S/o Mathew, aged 63 years, Vattamala House, Manarcadu Village, Maracadu Kara, Manarcadu P.O., Kottayam Taluk.

3. C.P. Philip, S/o Philip, aged 66 years, Chemmathu House, Manarcadu Village, Manarcadu Kara, Manarcadu P.O., Kottayam Taluk, Pin 686519.

4. Sabu Abraham, S/o Abraham, aged 52 years, Mylakkattu House, Manarcadu Village, Maalam Kara, Maalam P.O.., Kottayam Taluk, Pin 686019.

Addl.5. Renjith Mathew, S/o Mathew, aged 52 years, Ottaplackal House, Manarcadu Village, Manarcadu Kara, Manarcadu P.O., Kottayam Taluk.

Addl.6. Mathew Jacob, S/o Mathew, aged 60 years, Kochuparampil House, Manarcadu Village, Manarcadu Kara, Manarcadu P.O., Kottayam Taluk.

Addl.7. Shaji Mathew, S/o Mathew, aged 58 years, Puthumana House, Manarcadu Village, Maalam Kara, Maalam P.O., Kottayam Taluk.

Addl.8. Melvin V. Kuruvilla, S/o Kuruvilla, Thalachirackal House, Manarcadu Village, Maalam Kara, Malalam P.O.,Kottayam Taluk.

2nd defendant abated as per order dated 24.06.2019.

Addl.5th defendant impleaded as per order in IA 670/2019 dated 11.04.2019.

Addl. Defendant 6 to 8 are impleaded as per order in IA1/2020 dated 16.03.2020.

D1 By Adv. V.T. Dinakaran.
D2 abated.
D3 & Addl. D6 By Adv. Rajeev P. Nair
D4 & Addl.D8 By Adv.Bobby John K.A. & Adv. P.J. Philip.
Addl.D5 & Addl.D7 By Adv. Anil D. Kartha

This suit having been finally heard on 11.09.2020 and the court on 18.09.2020 delivered the following.

JUDGMENT

Suit for mandatory and prohibitory injunction, rendition of accounts and other reliefs.

2. Plaint averments in nutshell is as follows:- The first plaintiff is the St.Mary's Cathedral Manarcadu, which was established during 16th century and governed by 1934 Constitution of Malankara Orthodox Syrian Church. Second plaintiff is the Vicar of the first plaintiff Church appointed by the Assistant Metropolitan of Kottayam Diocese. Plaintiffs 3, 4 and 5 are the parishioners of the 1st plaintiff church. The 1st plaintiff church is having two churches known as Valiapalli and Cheriapalli and also its office, a shrine, three parish halls, shopping centers, college, Hospital and cemetery which are scheduled as item

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Nos.1 to 3 in the plaint. The 1st defendant claims to be the priest belonging to Yacobaya Suriyani Christiani Sabha formed in the year 2002 and governed by 2002 constitution. Defendants 2 to 4 are the persons claiming to be the Trustees of the erstwhile Patriarch faction in the 1st plaintiff Church elected as per the provisions of 2002 constitution. The defendants are not accepting the 1934 constitution of the Malankara Orthodox Syrian Church. The Malankara Syrian Christian Association was constituted in 1876 at Mulamthuruthy, in the meeting of accredited representatives of all the Churches, popularly known as 'Mulamthuruthy Synod'. The Malankara Syrian Christian Association popularly called as the 'Malankara Association' was formed to manage the affairs of parish churches under Malankara Orthodox Syrian Church and the community as a whole. The meeting of Malankara Association held on 26.12.1934 at M.D Seminary, Kottayam convened by the Catholicos, unanimously adopted constitution called '1934 Constitution' for the administration and management of the Malankara Church, its properties and its constituent parish churches and the community as a whole. There were two factions in the Malankara Orthodox Syrian Church namely Patriarch faction owing allegiance to the Patriarch of Antioch and Catholicose faction owing

allegiance to the Catholicose of the East. The factional dispute in the Malankara Church gave rise to various litigations. The Apex Court in Moran Mar Baselious Catholicos case (1958 KLT 721) vide judgment dated 12.09.1958 held that the meeting of the Malankara Association held on 26.12.1934 and 1934 Constitution are valid and binding on all parish churches under Malankara Church including the first plaintiff church. After the decision of the Apex Court unity and harmony prevailed in the church. All metropolitans and prelates accepted 1934 constitution and also submitted to the authority of Catholicos of East. The faction fight in Malankara Church disappeared and there was only one church namely Malankara Orthodox Syrian Church. Thereafter the Catholicos appointed Metropolitans belongs to both factions to various Dioceses under the Malankara Church. Thus, the administration and management of all parish churches including 1st plaintiff church is being carried out as per 1934 Constitution. Hence there was only one church known as Malankara Orthodox Syrian Church. Again in 1974, dispute arose in the Malankara Church, which again resulted in institution of number of suits because of the dissension in the Malankara Church. By putting an end to the said litigations ultimately the Apex Court as per common judgment in Civil Appeal Nos.4958 to

4960/1990 (PMA Metropolitan and others Vs. Moran Mar Marthoma and another, (AIR 1995 SC 2001) gave a quietus to the factional dispute and reiterated the validity of 1934 Constitution and held that all parish churches are Episcopal to the extent which is provided in the constitution and are to be governed and administered under 1934 Constitution. Thereafter the Apex Court amended the 1934 Constitution so as to give a democratic touch to have proper representation of all parish churches to Malankara Association. Further the Apex Court, held that all the prelates/vicars/priests who are entitled to the benefit of status quo as ordered by the Supreme Court shall swear allegiance to 1934 Constitution. (AIR 1996 SC Page 3121 to 3127). The erstwhile Patriarch faction filed C.M.P. No.2079/97 before the Hon'ble High Court of Kerala for execution of the decree in PMA Metropolitan case. Against the order in C.M.P. No.2079/97 dated 06.04.2001, SLP No7593 of 2001 was filed before the Supreme Court. When the SLP was taken up on 28.11.2001 both the parties agreed for an election to the Malankara Association. The Apex Court recorded the submissions and on consensus among the parties directed Moran Mar Baselios Marthoma Mathews-II, the then Catholicos to convene the Malankara Association. It was further held that if the majority decides

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that Marthoma Mathews-II, is the Malankara Metropolitan, he shall hold the post or else he has to step down. As decided by both parties Justice V.S. Mallimath was appointed as observer to oversee the election in a free and fair manner. A list of 915 churches including the 1st plaintiff church was submitted by the erstwhile Jacobite faction stating that the said churches admits the 1934 constitution and the church general body is to be conducted in compliance with the 1934 constitution to elect the delegates to the Malankara Association. The Malankara Association was held on 20.03.2002 at Parumala Seminary under the auspices of Justice Mallimath. In the Association so held, it was unanimously held that Marthoma Mathews-II shall be the Malankara Metropolitan and also elected a Managing Committee. The observer filed a report about the result of the election. The Apex Court accepted the report and held that the Managing Committee so elected shall be the Managing Committee under Article 78 of 1934 Constitution and the said election shall not be challenged in any court of law (2002 (1) KLT 125). After the election the Patriarch faction disassociated from the Malankara Church and completely denounced 1934 constitution. A separate parallel church and a constitution called 2002 Constitution was framed and its own Catholicos, prelates and Bishops

and other religious dignitaries and priests and vicars were also appointed. The Hon'ble Supreme Court in **K.S.Varghese v. St.Peter's & St.Paul's Syrian Orthodox Church** (2017 (3) KLT 261 (SC)) held that the 1995 judgment arising out of the representative suit is binding and operates as *res judicata* with respect to the matters it has decided, in the wake of provisions of Order 1 Rule 8 and Explanation VI to Section 11 of CPC. The Hon'ble Apex Court also held that 1934 constitution is valid and binding upon the Malankara Church and the same is adequate for the management of the Parish Churches. The defendants are not conducting the administration and management of the 1st plaintiff church in compliance with the provisions of 1934 constitution. Hence the suit.

3. Defendants 1, 3 and 4 filed written statement. Second defendant is no more. The 1st defendant filed written statement and the contentions in the written statement in nutshell is as follows: The suit is not maintainable either in law or on facts. The plaintiffs have no locus standi to institute the suit. The 1st plaintiff Church has not taken any decision to institute the suit and the 2nd plaintiff is not competent

to represent the Church. The 1st defendant is the present Vicar of the Church and defendants 2 to 5 are the legally elected Trustees. The plaintiffs 2 to 5 are having interest adverse to that of 1st plaintiff church. To be a member of the 1st plaintiff church they should pledge allegiance to the Patriarch and Metropolitan ordained and appointed by his holiness. From the allegations of the plaintiffs 3 to 5, it can be seen that they have defied the Holy Patriarch of Antioch and the Metropolitan under him. The 1st plaintiff church was established not under the 16th Century but it has a history of more than thousand years. The 1st defendant is not a constituent church of the Malankara Church coming under the Kottayam Diocese and it is an independent church. The allegation that the church is governed by 1934 constitution of the Malankara Church is absolutely false and therefore denied. The 1st plaintiff church is being managed and administered as per the provisions of its own constitution approved by the Patriarch of Antioch. The 1st plaintiff church is being managed by its own rules and regulations from the time several centuries ago. The 2002 constitution has no application as far as the administration of the 1st plaintiff is concerned. The allegation that defendants 2 to 4 were elected as per the provisions of the 2002 constitution by the Patriarch faction is

denied. It is true that the defendants 3 to 5 were not appointed as per the provisions of the constitution of the Malankara church. The constitution of the Malankara Church has no application to the 1st plaintiff. The 1st plaintiff Church was not a participant in the Mulamthuruthy Synod. The 1st plaintiff was having its own constitution long prior to 1934 and it was finally amended and complied in 1958. The first plaintiff was not a party to the proceedings in Moran Mar Baselious Catholicos case or to the PMA Metropolitan case. The first plaintiff is not aware of the so called list of 915 churches submitted before Justice V.S. Mallimath. Even assuming that the name of the church was included in such a list by someone else, that was not binding on the 1st plaintiff. The first plaintiff did not conduct any election of the representatives to participate in the meeting claimed to have been held on 20.03.2002 at Parumala Seminary. The verdict of the Apex Court that the managing committee elected on 20.03.2002 would be the managing committee under Article 78 of the 1934 Constitution, will not affect the 1st plaintiff church, as the so called 1934 Constitution is not applicable to the Church. The plaintiff has not, at any point of time, subscribed the so called 1934 Constitution. The 1st plaintiff church is not a part of either of the

Patriarch faction or the Catholic faction. The allegation that the 1st defendant is presently officiating as the Vicar of the first plaintiff Church is true but the allegation that he was doing illegally on the side of the Patriarch faction is false and denied. The priest of the 1st plaintiff church are not part of any faction. The allegation that the accounts of the church was not properly maintained and the defendants were not keeping the cash balance in the bank account are false and denied. The demand of the plaintiffs for a direction to the defendants to hand over the possession of the properties of the church to the trustees to be elected, is unsustainable and illegal. The decision in **K.S.Varghese v. St.Peter's & St.Paul's Syrian Orthodox Church** case is the culmination of the dispute that arose within three parish churches, Varikoli church, Arthatt church and Kolencherry church. The reasoning and the grounds on which the decision is anchored are totally different from the facts and circumstances attending the first plaintiff church. In the PMA Metropolitan case, the Hon'ble Supreme Court was pleased to find that the 1934 constitution was not applicable to the Knanaya Samudayam, even though the Knanaya Churches were constituent parts of the Malankara church. The Simhasanam churches also were exempted from the ambit of the 1934 constitution, along with

Evangelical Association of the East and the St.Anthony's Church, Mangalore. The first plaintiff church has been following certain rituals that are unique for the church. A very distinctive aspect of the first plaintiff church is that, only the members of the first plaintiff parish can become the priests of the church. The priests are appointed by the parish general body. The 1st plaintiff church was elevated as a Cathedral Church by his holiness the holy Patriarch of Antioch in the year 2004. It is submitted that the constitution of the first plaintiff church has been recognised, admitted and accepted by all, including the Catholicos. During the period when Mar Ivanios Metropolitan, who was consecrated by the Catholicos, who was recognized by the Holy Patriarch of Antioch as his representative, the election conducted by the first plaintiff church as per its own constitution was accepted by him. Even after the disposal of the Samudayam suit by the Hon'ble Supreme Court of India, the constitution of the first defendant church was accepted, approved and followed by both Mathews Mar Ivanios Metropolitan and Paulose Mar Pilixinos Metropolitan. It is thus clear that the constitution of the first plaintiff church was recognised all throughout, by all, irrespective of the factional dispute between the Orthodox and the Jacobites. The only intention of the plaintiffs 2 to 5

is to create chaos and confusion among the members of the parish and worshipers. Hence the 1st defendant prays to dismiss the suit with costs.

4. The second defendant is no more and no written statement filed by him. Defendants 3 to additional 5th defendant filed written statement with almost similar contentions taken by the 1st defendant in the written statement.

5. The other contentions of 3rd defendant which are not covered in the written statement of the 1st defendant in nutshell is as follows: The suit is bad for non-joinder of necessary party and also barred by res judicata. It is submitted that the first plaintiff Cathedral belongs to the members of the Cathedral who constituted the General Body and is governed by a 'Nadapadikramam (Rules of procedure) accepted and adopted by all the members centuries ago and which was periodically amended incorporating all legal suggestions of the parishioners and finally amended as per the resolution passed in a meeting held on 23rd Mithunam 1109(ME). As the members of the 1st plaintiff Cathedral later decided to formulate more detailed code of Rules of administration for it, they incorporated them in a document

styled as "Bharananghadana of St.Mary's Church, Manarcad" which was approved and adopted by the General Body in a meeting held on 22.09.1958. The said document was printed in 1958. This defendant reiterate that the Cathedral and its properties entirely belong to the members of the 1st plaintiff Cathedral as they and their predecessors alone had spent the money and energy for the construction of the Cathedral and acquisition of all its properties. Not even a penny had been spent by anybody other than the members of the 1st plaintiff Cathedral. The Malankara Orthodox Syrian Church came into existence only in 1912 as a faction seceding from the Jacobite Syrian Church of which the Patriarch was and is the supreme Authority. They do not have any right, title, interest over the properties of the 1st plaintiff Cathedral. The members of the 1st plaintiff church had no occasion to make any prayer by reference to the Bishop of the Orthodox faction and Cathedral under him. The 1st plaintiff Cathedral had never accepted 1934 constitution and at the worst it may bind only the members of the Orthodox faction. The plaintiffs are trying to misinterpret the judgments and to conquer and invade the Cathedral and the schedule properties. The decision referred by the plaintiff

is not binding on the 1st plaintiff Church. The hospital and educational institutions are not the properties of the church and they are charitable institutions. Third defendant pressed to dismiss the suit.

6. The allegations in the written statement filed by the 4th defendant which are not covered in the written statement of defendants 1 and 3 in nutshell is as follows: The managing committee of the Church was elected on 26.11.2017. The election was conducted as per the procedure provided in the constitution governing the affairs of the church framed in 1958. If the reliefs in the suit are granted, that would result in unfathomable chaos and confusion among the members of the parish as well as the faithful. The church is a Marian Pilgrimage Centre where several lakhs of devotees used to visit and pray. Any discordant knot struck in the present system of administration as also in the practices followed in the church would turn out to be fatal to the serenity and the peaceful atmosphere that encircle the church. Thus, the balance of convenience is not in favour of the plaintiffs. The parishioners have always considered the Holy Patriarch of the Antioch as their spiritual head. They receive the blessings from the Holy Patriarch through a representative of his

Holiness, which has normally been a Metropolitan consecrated by him or, his authorised delegate. The 1st plaintiff church is not the throne of a Bishop and both the factions are having different Cathedrals. The Manarcadu church was having its own constitution formulated centuries back. During 1109 (ME) the constitution was amended and codified. The amendments were accepted in the general body convened on 26.09.1934. A similar formation of the constitution was considered in detail and approved by the general body during 1955 which was published in 1958. There are lot of differences in the 1934 constitution and constitution of the Manarcadu church.

7. The additional 5th defendant also filed written statement and contentions taken by additional 5th defendant in addition to the contentions taken by other defendants are as follows: The plaintiffs are not competent to represent the church. The suit is not maintainable and also barred by the principles of res judicata. The 1st plaintiff is not doing anything on the side of the patriarch faction. The priests of the 1st plaintiff church are not part of any faction. The allegation that there was a parallel system of religious services performed in the 1st plaintiff church against the spirit of the judgment of the Apex Court is also

denied. The 1st plaintiff has always been under a system of administration which is unique for the church and it is not a parallel system of religious service. The allegation that the persons who were elected as the trustees ceased to be the trustees and they were illegally possessing the church properties is denied. It appears that the plaintiffs are relying heavily on the judgment of the Hon'ble Supreme Court in the PMA Metropolitan case for laying the claim over the first plaintiff church. The decision in **Varghese vs. St.Peter's & St.Paul's Syrian Orthodox Church** case is the culmination of the dispute that arose within three parish churches, Varikoli church, Arthatt church and Kolencherry church. The reasoning and the grounds on which the decision is anchored are totally different from the facts and circumstances attending the first plaintiff church. In the PMA Metropolitan case, the Hon'ble Supreme Court was pleased to find that the 1934 constitution was not applicable to the Knanaya Samudayam, even though the Knanaya churches were constituent parts of the Malankara church. The Simhasanam churches also were exempted from the ambit of the 1934 constitution, along with Evangelical Association of the East and the St.Anthony's church, Mangalore. In fact those churches were held to be having the right to follow their own

constitution for sound reasons recorded by the Hon'ble High Court of Kerala in A.S.No.331/1980. The Hon'ble Supreme Court quoted with approval and endorsed its agreement with the findings of the High Court with respect to the status of those churches. A close scrutiny of the origin, the mode of administration, the various rituals and practices and the constitution followed by the first plaintiff church unequivocally establish that the church possesses the same characteristic features of the churches that were exempted by the Hon'ble Supreme Court of India from the ambit of the 1934 constitution. The first plaintiff church has its own constitution formulated centuries back. It was amended during 1109 (M.E). and the amendments were approved on 0**6.01.1934** by the general body. A similar reformation was made in 1935 and the amended constitution was printed and published in the form of a booklet in the year 1958. The above constitution is different from the 1934 constitution in many ways. It is submitted that there was a suit as OS.315/1960 before the Munsiff's Court Kottayam instituted by some members of the Parish in a representative capacity. The suit was disposed of finding that the first plaintiff herein is an independent distinct trust governed by its own constitution. An appeal was preferred against the decree and judgment, as A.S.No.313/1964. The said appeal

was shown to be compromised between the parties as per a joint petition. It is submitted that the compromise was void and unsustainable due to want of publication as provided under Order 1 Rule 8(4) of the Code of Civil Procedure, 1908. The terms of the so-called compromise were not incorporated in the Constitution of the church. Any amendment of the constitution can be effected only by following the procedure contemplated under Article 192 of the Constitution. Thus the so called compromise arrived in A.S.313/1964 is not binding on the first plaintiff church.

8. Additional 6th defendant filed written statement on 19.8.2020 adopting contentions of additional 5th defendant. Sixth defendant contended that second plaintiff is not competent to act as priest or vicar of first plaintiff. Dictum laid down in K.S.Varghese case is not applicable to first plaintiff as core issue regarding unique nature of first plaintiff and application of 1934 constitution to its administration not adjudged in that case. First plaintiff church was created in the form of trust with its fundamental and basic character following apostolic succession of St.Peter. Same cannot be altered. During the period from 1958 to 1971 first plaintiff remained

independent following its own constitution. Present lis is the last one in the series of various other litigation with No.O.S.148/1975(re-numbered as O.S.72/1977 on the file of Additional District Court, Ernakulam) and O.S.426/1997, which was transferred to Additional District Court, Ernakulam and re-numbered as O.S.16/1997, which were abandoned and dismissed for default. Sixth defendant pressed to dismiss the suit. Suit is hopelessly barred by limitation also. Additional 5th defendant filed additional written statement reiterating same contentions advanced by additional 6th defendant in their written statement.

9. Additional 7th defendant filed written statement adopting contentions by additional 5th defendant. According to 7th defendant second plaintiff who is not properly consecrated priest hence not entitled to represent best interest of Manarcad church. Dictum laid down in K.S. Varghese case and AIR 1995 S.C. 2001 are not binding present controversy posed before court. Manarcad church is a trust created following apostolic succession of St.Peter. Same cannot be altered introducing administration formulated in 1934. Second plaintiff appointed not belong to the holly see of patriarch is not

competent to impart sacraments in the church. Manarcad church remained independent following its own constitution during the period of unification. Present lis is the last one in the series of various other litigation with No.O.S.148/1975(re-numbered as O.S.72/1977 on the file of Additional District Court, Ernakulam) and O.S.426/1997, which was transferred to Additional District Court, Ernakulam and re-numbered as O.S.16/1997, which were abandoned and dismissed for default. Sixth defendant pressed to dismiss the suit. Suit is hopelessly barred by limitation also.

10. The additional 8th defendant also filed written statement and contentions in addition to the written statement filed by other defendants are as follows: The 'A' relief is to direct the first defendant to convene the general body of 1st plaintiff church and to elect trustees. The 'D' relief sought is to hand over the keys of first plaintiff church and its institution to the 2nd plaintiff and the trustees. The authority of the 2nd plaintiff is indirectly ought to be established without asking for a declaration of his status. As per the 'A' relief it is admitted that the 1st defendant is the Vicar. The 1st defendant is ought to be removed indirectly through 'D' relief. There are seven priests in

the Manarcardu church who are the parishioners of the above church. They are selected by the parishioners in a duly convened parish assembly and ordained as priests by the Metropolitan who is in communion with Patriarch. The tenure of the priests are for lifetime and are not transferable. Hence the parish members are necessary party to the suit to decide whether the question arising in the suit is covered by the decision of the Hon'ble Apex Court in K.S. Varghese cited supra. It is highly necessary to go through the history of the Manarcad church to unravel as how it was established and the mode of conduct of religious services and administration. The above decision of the Hon'ble Supreme Court did not cover the vital issue arising in the suit and the church. Some of the other churches accepted the 1934 constitution. Manarcadu church never accepted 1934 constitution. Manarcadu church is functioning as an independent trust with essential spiritual relationship to Metropolitan who functioned in spiritual communion with the Patriarch. The spiritual needs of the parishioners are conducted by the vicars and priests who are known as edavaka pattakkar. The temporal administration is carried on by three trustees and committee members selected by the general body of the church. Plaintiffs are also estopped from contending that

administration of Manarcad church should be altered in tune with 1934 constitution. Documents produced by plaintiffs themselves prove that Diocesan Metropolitan of Kottayam under Mar Augen, Catholicos, installed by Patriarch on 22.05.1964, himself accepted mode of both spiritual and temporal administration of Manarcad church. Having done so, they cannot be heard to contend now that said mode of administration should be altered. Kalpana No.240 dated 26.08.1967 Ordaining Fr.Kizhakkedathu Kuriakose who was selected by parish assembly of Manarcad church held on 30th of July 1967 as Edvakapattakkaran. He is still continuing in Manarcad church as edavaka pattakkaran without being transferred anywhere by any metropolitan. The said metropolitan was chosen for ordination because at that point of time, he was functioning under spiritual authority of Patriarch of Antioch in the unified Malankara church. Kalpanas by the above mentioned metropolitan agreeing to and accepting election of trustees and committee members of Manarcad church between 1967 to 1973 is clear admission about the mode of temporal administration in Manarcad church. Said election was not held, in accordance with 1934 constitution. Manarcad church had not associated itself to Malankara Association contemplated by 1934 constitution. Between 1958 to 1970,

there were meetings of Malankara Association, on 26.12.1958, 16.09.1959, 12.05.1962 and 1965 and then on 31.12.1970. Admittedly representatives of Manarcadu church were not selected to meetings of 1958, 1959, 1962 and 1965. Sending representatives to 1970, Association meeting was conditional on them expressing opinion consistent with constitution of Manarcad church. Document produced by plaintiff to prove this may be carefully perused. It can be seen that reference to clause 12 of 1934 constitution has been scored off. It is admission that parish assembly meeting was held without following said provision of 1934 constitution. None opposed. Plaintiff has not produced the original of this document. Photocopy may not accepted as evidence. It may also be noticed that meeting on 31.12.1970 was to elect successor of then Malankara Metropolitan wherein representatives of churches participated. Attending such a meeting by a few representatives cannot be equated to surrender of mode of administration of Manarcadu church to 1934, constitution of Malankara church. At best, it is only an aberration from regular sequence of events till 1970 and thereafter with regard to affairs of Manarcad church. It is trite that Custom should prevail in all cases and if any aberrations have to be corrected, such correction should be in the

direction of re-establishing the rule of custom. As such Manarcad church has not send representatives to any of meetings of Malankara Association after 1970. Documents are produced saying that Manarcadu Church has made contributions to Catholicate Day in unified Malankara church. Such voluntary donations/ contributions does not result in alteration of custom immemorially established regarding spiritual and temporal administration of Manarcad church. Metropolitan of Malankara church has never ever appointed vicars or priests in Manarcad Church invoking Article 40 of 1934, constitution. Trustees and managing committee were never ever elected following article 24,25, of 1934 constitution. Having accepted the mode of spiritual and temporal administration of Manarcad Church during 1964 to 1970 the metropolitan who appointed second plaintiff and plaintiffs who claim under him are estopped from contending otherwise. Hon'ble Supreme Court in K.S. Varghese case ((2017) 15 SCC 333) declared that 1995 Suppl[4] SCC 286 is binding as res judicata. Addl. 8th defendant pressed to dismiss suit.

11. Additional 8th defendant filed additional written statement on 6.8.2020. The averments in the additional written

statement can be summarised as follows:- Catholicose come Malankara Metropolitan of Malankara Orthodox church filed O.S.148/1975 before Subordinate Judge's Court, Kottayam with No.148/1975 which got transferred to I[st] Additional District Court, Ernakulam and re-numbered as O.S.72/1977. Aforesaid suit filed to establish authority of Catholicose and of those under him invoking 1934 Constitution of Malankara Orthodox church and to alter existing spiritual and temporal management of Manarcadu church. The hotly contested suit got dismissed on 18.12.1996 upon the submission of counsel for plaintiff that it become infructuous. Plaintiffs in O.S.72/1977 not pressed that suit due to the binding declaration of apex court in (AIR 1995 SCC 2001).So the present attempt to raise same cause of action indirectly is not allowable as it tantamount to violation of verdict of apex court. Parishioners launched O.S16/1997 to alter unique administration of Manarcadu church. But, same got dismissed for default. Principle of Order IX Rule 9 CPC do not apply to the facts of present case. O.S41/2003,O.S43/2007 & 10/2003 on the file of First Additional District Court, Ernakulam, were instituted as representative of parishioners of three churches namely, St.George Orthodox Syrian church, Mannathoor, St.Peter's & St,Paul's Syrian Orthodox church,

Kolencherry and St.Mary's Orthodox church, Varikoli. First plaintiff with its unique mode of spiritual ecclesiastical and temporal administration was never represented in the aforesaid suit. Additional 8th defendant pressed to dismiss the suit.

12. In the bright light of dictum laid down by the Hon'ble Supreme Court in Civil Appeal No.7115-7116 of 2019 (Arising from SLP(c) Nos.20661-20662 of 2019) and direction in the records proceedings dated 14.2.2020, this court framed following points for consideration.

> ***1. Whether this suit is covered by the verdict of Hon'ble Apex Court in K.S.Varghese and others v. St.Peter's and Paul's Syrian Orthodox Church and others(2017 (3)KLT 261)?***
>
> ***2._ Reliefs and costs?***

Counsel for 4th and 8th defendants filed written submissions before court.

13. **Points No.1 and 2:** For convenience, these points can be considered together.

On close perusal of plaint, written statements and entire documents produced before court, it is brought out that plaintiffs are pressing for decree directing first defendant to convene general body of first plaintiff church in compliance with provisions of 1934 Constitution to conduct election of trustees and managing committee. They also pressed to direct defendants 2 to 4 to render accounts to the successors in office and to hand over keys of church and institution to officials elected under 1934 Constitution of Malankara Orthodox Syrian Church. They also pressed for decree of permanent prohibitory injunction to resist defendants from interfering with administration of first plaintiff church except as provided in 1934 Constitution.

In order to reiterate their contentions plaintiffs vigorously averred that St.Mary's Cathedral, Manarcadu is a constituent church of Malankara Orthodox Syrian Church. Second plaintiff is a vicar of first plaintiff's church appointed by Assistant Metropolitan of Kottayam Diocesan vide kalpana with No.K165/2017 dated 16.8.2017. Plaintiffs 3, 4 and 5 are parishioners of first plaintiff church. First defendant claims to be the priest belong to Yacobaya Suriyani Christiani Sabha formed in the year 2002 and claims to be appointed as vicar under

Constitution of first plaintiff Church alleged to have compiled in the year 1958. Defendants 2 to 4 are persons claims to be the trustees of erstwhile patriarch faction in the first plaintiff church. Defendants are not accepting 1934 constitution of Malankara Orthodox Syrian Church. After enumerating history regarding formation of Malankara Syrian Christian Association and series of incidents regarding disputes settled through verdicts in ***Moran Mar Baselious Catholicos case (1958 KLT 721), PMA Metropolitan and ors. v. Moran Mar Marthoma and anr.(AIR 1995 SC 2001), and K.S.Varghese v. St.Peter's and Paul's Syrian Orthodox Church (2017 (3) KLT 261(SC))*** Plaintiffs specifically contended before court that defendants having no authority to hold administration of first plaintiff. They pressed to decree lis.

14. Defendants though filed separate written statements, the bone of contention advanced by them are one and the same. They raised multi dimensional contentions to resist plaint averments and distinguished various verdicts of court apex. According to defendants, first plaintiff is a unique independent church not belonging to

patriarch faction or catholicose faction of Malankara Church coming under Kottayam Diocesan. First plaintiff is not governed by 1934 Constitution, but governed by Constitution compiled in the year 1958.They were not parties in Moran Mar Baselious Catholicose case or PMA Metropolitan case. Though, it is assumed that name of first plaintiff church find a place in the list of 915 churches submitted before Justice V.S Mallimath in connection with election of delegates to the Malankara Association same is not binding first plaintiff. Members of first plaintiff are declaring allegiance to holy patriarch of Antioch being the successor in office of St.Peter, who was blessed by Lord Jesus Christ to start sabha and form churches. First plaintiff did not participate in Mulamthuruthi Synod to form Malankara Syrian Christian Association. First plaintiff is also entitled to have an exemption from 1934 Constitution just like, Knanaya Samydayam, Simhasanam churches, Evangelical Association of the East and St.Antony's Church, Mangalore in the back drop of various rituals and practices like Ettu Nombu, nadathurappu and bath in two ponds in the church premise. In addition to that the priest hood of first plaintiff is a right conferred to the members of first plaintiff parish. Priest cannot be transferred to any other church. He is not a salaried employee.

According to the defendants, first plaintiff is not an episcopal church under the governance of Bishop. Though first plaintiff was elevated as cathedral church by holy patriarch of Antioch in the year 2004 it is not the throne of any Bishop. There is no tomb of any Bishop inside the church. The terms of 1958 Constitution are entirely different from 1934 Constitution. According to the defendants, Constitution of first plaintiff was recognized and accepted by all including Catholicose. Defendants emphatically denied plaint allegations regarding lack of their authority to administer first plaintiff and Mal-administrations. They pressed to dismiss suit.

15. Admittedly, Hon'ble Supreme Court in ***K.S. Varghese v. St.Peter's and Paul's Syrian Orthodox Church & ors. ((2017) 15 SCC.333)*** held as follows:

"228 Resultantly, based on the aforesaid findings in the judgment, our main conclusion, interalia are as follows:

228.1. Malankara Church is episcopal in character to the extent it is so declared in the 1934 Constitution. The 1934 Constitution fully governs the affairs of the parish churches and shall prevail.

228.2, The decree in 1995 judgment is completely in tune with the judgment. There is no conflict between the judgment and the decree.

228.3, The 1995 judgment arising out of the representative suit is binding and operates as res judicata with respect to the matters it has decided, in the wake of provisions of Order I Rule 8 and explanation 6 to Section 11 CPC . The same binds not only the parties named in the suit but all those who have interest in the Malankara Church. Findings in earlier representative suit i.e, Samuthayam suit are also binding on parish churches/parishioners to the extent issues have been decided.

228.4, As the 1934 Constitution is valid and binding upon the parish churches, it is not open to any individual church, to decide to have their new constitution like that of 2002 in the so-called exercise of right under Articles 25 and 26 of the Constitution of India. It is also not permissible to create a parallel system of management in the churches under the guise of spiritual supremacy of the patriarch.

228.5, The primate of Orthodox Syrian Church of the East is Catholicos. He enjoys spiritual powers as well as the Malankara Metropolitan. Malankara Metropolitan has the prime jurisdiction regarding temporal, ecclesiastical and spiritual administration of Malankara Church subject to the riders provided in the 1934 Constitution.

228.6, Full effect has to be given to the finding that spiritual power of patriarch has reached to a vanishing point. Consequently, he cannot interfere in the governance of parish churches by appointing vicar, priest, deacons, prelates (High priests) etc. and thereby create a parallel system of administration. The appointment has to be made as per the power conferred under the 1934 Constitution on the Diocese, Metropolitan etc. concerned.

228.7, Though, it is opened to the individual member to leave a church in exercise of the right not to be a member of any association and as per the Article 20 of the Universal Declaration of Human Rights, the parish assembly of the church by majority or otherwise cannot decide to move church out of the Malankara Church. Once a trust is always a trust.

228.8, When the church has been created and is for the benefit of beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property or management. The Malankara Church is in the form of a trust in which its properties have vested. As per the 1934 Constitution, the parishioners though may individually leave the church, they are not permitted to take the movable or immovable properties out of the ambit of the 1934 Constitution without the approval of the church hierachy.

228.9, The spiritual power of patriarch has been set up by the appellants clearly in order to violate the mandate of the 1995 judgment of this court which is binding on the patriarch, Catholicos and all concerned.

228.10, As per the historical background and practices which have been noted, the patriarch is not to exercise the power to appoint vicar, priest, deacons, prelates etc. Such powers are reserved to other authorities in the church hierarchy. The patriarch, thus cannot be permitted to exercise the power in violation of the 1934 Constitution to create a parallel system of administration of churches as done in 2002 and onwards.

228.11, This court has held in 1995 that the unilateral exercise of such power by the patriarch was illegal. The said decision has also been violated. It was only in the alternative this court held in the 1995 judgment that even if he has such power, he could not have exercised the same unilaterally, which we have explained in this judgment.

228.12, It is opened to the parishioners to believe in the spiritual supremacy of the patriarch or apostolic succession. But, it cannot be used to appoint vicars, priests, deacons, prelates etc in contravention of 1934 Constitution.

228.13, Malankara Church is episcopal to the extent as provided in the 1934 Constitution, and the right is possessed by the Diocese to settle all internal matters and elect there own Bishops in terms of said Constitution.

228.14, Appointment of vicar is a secular matter. There is no violation of any of the rights encompassed under Art.25 and 26 of the Constitution of India , if the appointment of vicar, priest, deacons,

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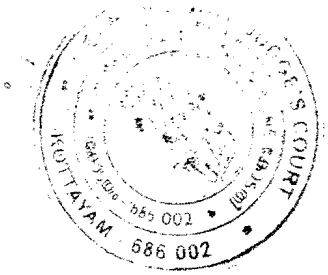
prelates (High priests) etc. is made as per the 1934 Constitution. The patriarch has no power interfere in such matter under the guise of spiritual supremacy unless 1934 Constitution is amended in accordance with law. The same is binding on all concerned.

228.15, Udampadies do not provide for appointment of vicar, priests, deacons, prelates etc. Even otherwise once 1934 Constitution has been adopted, the appointment of vicar, priests, Deacons, Prelates (High Priests) etc. is to be as per the 1934 Constitution. It is not within the domain of the spiritual right of the patriarch to appoint vicar, priests etc. The spiritual power also vests in the other functionaries of the Malankara Church.

228.16, The functioning of the church is based upon the division of responsibilities at various levels and cannot be usurped by a single individual however, high he may be, The division of powers under the 1934 Constitution is for the purpose of effective management of the church and does not militate against the basic character of the church being episcopal in nature as mandated thereby. The 1934 Constitution cannot be construe to be opposed to the concept of spiritual supremacy of the patriarch of Antioch. It cannot as well, be said to be an instrument of injustice or vehicle of oppression on the parishioners who believe in the spiritual supremacy of the patriarch.

228.17, The church and the cemetery cannot be confiscated by anybody. It has to remain with parishioners as per the customary rights and nobody can be deprived of the right to enjoy



the same as a parishioners in the church or to be buried honourably in the cemetery, in case he continues to have faith in Malankara Church. The property of Malankara Church in which is also vested the property of the parish churches, would remain in trust as it has for time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the church and the properties.

228.18, The faith of church is unnecessarily sought to be divided viz-a-viz the office of the Catholicos and the patriarch as the common faith of a church is in Jesus Christ. In fact, an effort is being made to take over the management and other powers by raising such disputes as to supremacy of patriarch or Catholicos to gain control of temporal matters under the garb of spirituality. There is no good or genuine cause for dispute which have been raised.

228.19, The authority of patriarch had never extended to the Government of temporalities of the churches. By questioning the action of the patriarch and his undue interference in the administration of churches in violation of the 1995 judgment, it cannot be said that the Catholicos faction is guilty of repudiating spiritual supremacy of the patriarch. The patriarch faction is to be blamed for the situation which has been created post 1995 judgment. The property of the church is to be managed as per the 1934 Constitution. The judgment of 1995 has not be respected by the patriarch faction which was binding on all concerned. Filing of Writ Petitions in the High Court by the Catholicos faction was to

deter the patriarch/his representatives to appoint the vicars etc. in violation of the 1995 judgment of this court.

228.20, 1934 Constitution is enforceable at present and the plea of its frustration or breach is not available to the patriarch faction. Once there is Malankara Church, it has to remain as such including the property. No group or denomination by majority or otherwise can take away the management or the property as that would virtually tantamount illegal interference in the management and illegal usurpation of its properties. It is not opened to the beneficiaries even by majority to change the nature of a church, its property and management. The only method to change management is to amend the Constitution of 1934 in accordance with law. It is not open to the parish churches to even frame bye-laws in violation of the provision of 1934 Constitution.

228.21, The Udumpadies of 1890 and 1913 are with respect to the administration of churches and are not documents of the creation of the trust and are not of utility at present and even otherwise cannot hold the field containing provisions in consistent with the 1934 Constitution, as per the Section 132 thereof. The Udumpady also cannot hold the field in view of the authoritative pronouncements made by this court in the earlier judgments as to the binding nature of the 1934 Constitution.

228.22, The 1934 Constitution does not create, declare, assign, limit or extinguish , whether in present or future any right, title or interest, whether vested or contingent in the Malankara

Church properties and only provides a system of administration and as such is not required to be registered. In any case, the Udumpadies for the reasons already cited cannot supersede the 1934 Constitution only because these are claimed to be registered.

228.23, In otherwise episcopal church, whatever autonomy is provided in the Constitution for the churches is for management and necessary expenditure as provided in Section 22 etc.

228.24, The formation of the 2002 Constitution is the result of illegal and void exercise. It cannot be recognised and the parallel system created thereunder for administration of parish churches of Malankara Churches cannot hold the field. It has to be administered under the 1934 Constitution.

228.25, It was not necessary after amend-ment of the plaint in Mannathoor Church matter to adopt the procedure once again of the representa-tive suit and proper procedure has been followed. It was not necessary to obtain fresh leave.

228.26, The 1934 Constitution is appropriate and adequate for the management of the parish churches, as such there is no necessity of framing a scheme under section 92 CPC.

228.27, The plea that in face of the prevailing dissension between two factions and the remote possibility of reconciliation, the religious services may be permitted to be conducted by two vicars of each faith cannot be accepted as that would amount to patronizing parallel systems of administration.

228.28, Both the factions, for the sake of sacred religion they profess and to pre-empt further bickering and unpleasantness precipitating unavoidable institutional degeneration, ought to resolve their differences if any, on a common plat form if necessary by amending the Constitution further in accordance with law, but by no means to create parallel system of administration of the same churches resulting in law and order situation leading to even closure of churches can be accepted".

In the back drop of verdict of Hon'ble Supreme Court in ***K.S. Varghese v. St.Peter's and Paul's Syrian Orthodox Church and ors.(2017 (15) SCC 333***) it is very vital to scrutinize rival contentions raised by the parties to adjudge controversy now posed in the form of point No.1 before court at the inception of lis.

According to defendants, first plaintiff is not a constituent church of Malankara Orthodox Syrian Church.

First plaintiff is a unique church and its members not belong to patriarch faction or Catholicos faction. None of the members of first plaintiff did not accept 1934 Constitution. They did not participate in the Mulamthuruthi Synod to form Malankara Association. According to the defendants, if any documents produced regarding their participation in Mulamthuruthi Synod same is fabricated. They further

contended that if the name of first plaintiff church find a place in the list of 915 churches submitted by the Jacobite faction to Justice V.S. Mallimath for the purpose of electing delegates to the Malankara Association admitting 1934 Constitution same do not bind them.

16. Counsel for 5th defendant advanced prime contention before court that plaint presented by plaintiff is to be taken off from the row as it is hit by Section 11 Explanation IV and Order II Rule 2 CPC. He firmly contended before court that the plaint averments itself reveal that plaint is heavily hit by verdict in K.S. Varghese's case as entire plaint allegation rest upon that verdict. If plaintiff ought to have to get any relief against defendants they ought to have to raise the contentions enumerated in present plaint in OS.142/1974, which ended in verdict by court apex reported as ***PMA Metropolitan & ors v. Moran Mar Marthoma and anr. (AIR 1995 SC 2001).*** He pressed to reject plaint under Order VII Rule 11 CPC.

Counsel for plaintiff emphatically resisted aforesaid contention. According to him, defendants are precluded from raising contentions already adjudged by Hon'ble Supreme Court in a different colour to resist plaint claim. According to the counsel for plaintiffs,

verdict in K.S.Varghese case created right to institute present lis. First plaintiff, even according to defendants governed by constitution compiled in the year 1958 and not by 1934 constitution. Plaintiffs who are trying to keep first plaintiff in row in tune with verdict in K.S.Varghese case ought to have to file suit for the reliefs mentioned in present lis. Hence, it can be concluded that suit is not hit by Section 11 and Order II Rule 2 CPC.

17. The counsel for defendants advanced next limb of contentions alleging that first plaintiff is entitled for an exemption like Knanaya churches, Simhasanam churches, Evangelical Association of the East and St.Antony's Church, Mangalore. The attempt of defendants to place first defendant among Knanaya churches, Simhasanam churches, Evangelical Association of the East and St.Antony's Church, Mangalore projecting the legend behind the origin of church, existence of Ettu Nombu, Nadathurappu, Bath in ponds provided in the church premises, election of vicar from parish members, contention touching lack of tomb of any Bishop inside the church, difference in various provisions of 1958 Constitution from 1934 Constitution will not assist them in the light of verdict in PMA Metropolitan case and K.S.Varghese

case. In addition to that as they failed to establish the aforesaid contentions before Hon'ble Supreme Court in already decided representative suits, they are precluded from raising those contentions before this court .

Defendants did not explain properly why they did not agitate the very contention that they are not part of Malankara sabha but a church having unique nature before Hon'ble Supreme Court in ***PMA Metropolitan and ors. v. Moran Mar Marthoma and anr.(AIR 1995 SC 2001)*** satisfactorily. The contention that PMA Metropolitan and ors. v. Moran Mar Marthoma and anr.(AIR 1995 SC 2001) is not a representative suit and first plaintiff did not get opportunity to raise contention regarding their unique nature as not arrayed in the party array also appears to be flimsy in the light of verdict in K.S. Varghese case.

Though, in para 11 of plaint in O.S.142/1974 on the file of Subordinate Judge's Court, Kottayam which ended in verdict of court apex in **PMA Metropolitan and ors. v. Moran Mar Marthoma and anr.(AIR 1995 SC 2001)**, it was specifically stated that the Malankara

church at present consist of an aggregate of about 15 lakh of worshipers in more than thousand parish churches. It further spell that a list of churches including first plaintiff in the present lis appended to the plaint. It was further averred in that plaint that irrespective of the sources from which money proceeded and the persons responsible for the establishment of each churches, each churches founded become a constituent of Malankara church. Even after such a fatal contention first plaintiff church did not opt to be impleaded in that lis and raised contentions regarding its alleged unique nature, now coming with the contention that they are not part of Malankara church appears to be very curious. Though, counsel for 3rd and 6th defendants vehemently argued before court that 'religious institutions' mentioned in para 11 of plaint in O.S.142/1974 mentioned above do not refer churches mentioned in the list appended to that plaint. On plain reading of para 11 it become more clear that aforesaid contention is also untenable.

18. According to counsel for plaintiff, clause (1), (2), (11) (12) (13), (17), (18), (19), (21), (22), (23), (26), (48), (49), (50), (51), (52), (53), (80), (132), (135) & (201) of Constitution of Manarcadu Martha

Mariam Yacobaya Suriyani Cathedral compiled in the year 1958 reveal that first plaintiff church form part of Malankara church and defendants were part of erstwhile patriarch faction.

Counsel for defendants vehemently argued before court that those clauses revealing role of metropolitha do not create an impression that they are part of erstwhile patriarch faction but those are for the purpose of ordaining vicar and showing allegiance to patriarch of Antioch. But, contention of defendants appears to be untenable in the bright light of first provision of 1958 constitution which reads as follows:-

"ഈ പള്ളി പൂർവ്വിക യാക്കോബായ, സുറിയാനി സഭയുടെ വിശ്വാസാചാരങ്ങൾ പുലർത്തുന്നതിനും അവ അനുസരിച്ചിട്ടുള്ള വി . കർമ്മാനുഷ്ഠാനങ്ങൾ നിവർത്തിക്കുന്നതിനും വേണ്ടി സ്ഥാപിക്കപ്പെട്ടിട്ടുള്ളതും നാളിതുവരെ അതേ സ്ഥാപന ഉദ്ദേശമനുസരിച്ചും വിശുദ്ധസഭയുടെ പരമ തലവനാകുന്ന അന്ത്യോഖ്യായുടെയും കിഴക്ക് ഒക്കെയുടെയും ശ്ളീഹായ്ക്ക് അടുത്ത വി . സിംഹാസനത്തിൻമേൽ അതാതുകാലം വാഴുന്ന പാത്രിയാക്കീസിന്റെയും ആ വി. സിംഹാസനത്തിങ്കൽ നിന്ന് അഷോഴഷോൾ കോട്ടയം ഭദ്രാസന ഇടവകയ്ക്കു വേണ്ടി അധികാരപ്പെടുത്തുന്ന മെത്രാഷോലിത്തയുടെയും മേലധികാരത്തിനും ആജ്ഞകൾക്കും കീഴ്പ്പെട്ട് നടന്നുവന്നിട്ടുള്ളതും മേലാലും അതിന് വ്യത്യാസം കൂടാതെ നടക്കേണ്ടതും ആകുന്നു."

The attempt of counsel for 5th defendant to interpret provision of 1958 constitution to establish that first plaintiff church is showing allegiance to patriarch of Antioch and recognising metropolitha as the spiritual and temporal head of church is for the purpose of ordaining vicar and it will not affect independent nature of first plaintiff church will fail on plain reading of provisions of 1958 constitution in the light of verdict in K.S. Varghese case.

19. The further contention that the term 'പൂർവ്വിക യാക്കോബായ' used in clause (1) of 1958 constitution aforementioned, refers to original yacobaya sabha constituted at Antioch and not the present yacobaya sabha appears to be quiet illogical as aforesaid term found in the constitution compiled in the year 1958.

Clause 132 to 135 of 1958 constitution also reveal various procedure to make recommendation on getting an application for the post of vicar did not reveal any unique nature of first plaintiff as claimed by defendants. There is no provision in 1958 constitution which restrict transfer of vicar to other churches under Kottayam Bhadrasanam as claimed by defendants.

20. Counsel for 4th and 8th defendants vehemently argued before court that present lis is an attempt to remove first defendant from the post of vicar and to place second plaintiff in that position.

According to learned counsel, K.***S. Varghese case(2017 (3) KLT 26 (SC)) recognised AIR 1995 SC 2001 and AIR 1959 SC 31*** and held that those verdicts are binding on all having interest in Malankara church. According to him, in ***AIR 1995 SC 2001*** Hon'ble Supreme Court held that situation obtaining on 1.1.1971 shall be deemed to be the position even today in all respects. This is with respect to affairs of Malankara church. This is on the basis that after installation of Catholicose by patriarch in Malankara on 22.5.1964 there was an attempted unification with single spiritual hierarchy in spiritual communion with patriarch of Antioch. In other words, Kottayam Diocesan Metropolitan of Malankara Orthodox church is bound to function in exactly the same manner that he and his predecessors in office were functioning during 1964 to 1970. Counsel for 4th and 8th defendants concluded his contention after taking me through various kalpanas issued by Kottayam Diocesan Metropolita of Malankara church touching governance of Manarcadu church, that first plaintiff

did not admit 1934 constitution even during the period from 1964 to 1971. So, the attempt to tilt administration of Manarcadu church tantamount to violation of verdict of Hon'ble Supreme Court reported as ***AIR 1995 SC 2001***. Though, the contention appears to be very attractive at the first blush, it looks otherwise on close analysis. The internal administration of church with the aid of 1958 constitution will not save first plaintiff from the limits of K.S. Varghese case. In addition to that, by placing an argument relying on a specific finding in AIR 1995 SC 2001 touching administration of Malankara church, 4th and 8th defendants admitted that Manarcadu church is the constituent of Malankara church.

21. The next limb of contention advanced by senior counsel is that the remittance of contribution to catholicate day in unifide Malankara church will not alter unique nature of first plaintiff. His attempt to compare the remittance of contribution to catholicate day with Ressisa mentioned in AIR 1959 SC 31 relying on dictum laid down in (1973) 1 S.C.C. 14 will not save Manarcadu church. The remittance of contribution to catholicate day reinforce contention of plaintiffs that first plaintiff is the constituent church of Malankara church.

The attempt of counsel for 4th and 8th defendants to reduce impact of authorisation issued by first plaintiff to it's representatives to attend meeting of Malankara Association of Malankara church held on 31.12.1970 pointing out non-production of attendance register of that meeting found limbless in the eye of law.

According to counsel for 4th and 8th defendants, not pressing of O.S.72/1977 on the file of Additional District Court, Ernakulam by Catholicose cum Malankara metropolitan in the light of verdict in AIR 1995 SCC 2001 re-inforce their contention that Malankara church shall be deemed to be that on 1.1.1971. But, such an interpretation is not possible from the records available before court.

22. Defendants also did not agitate regarding verdict in O.S.315/1960 on the file of Munsiff's Court, Kottayam and allegation regarding void nature of compromise verdict in A.S.313/1964 in representative suits finally adjudged by Hon'ble Supreme Court. In addition to that from the written statement filed in O.S.148/1975, it is revealed that defendants admitted the compromise entered in A.S.313/1964. Both parties did not produce compromise in A.S.313/1964 before court. Now, defendants are precluded from

projecting void nature of compromise in A.S.313/1964. From para 34 of written statement filed in O.S.148/1975 produced by 8th defendant, it is crystal clear that defendants are erstwhile patriarch faction and first plaintiff remained as constituent of Malankara church.

In addition to that on going through the remaining averments in the written statement filed by Manarcadu St.Mary's Yacobayya Syrian church though its vicars in O.S.148/1975 (filed by Moran Mar Baselious Ougon-I and others) before Subordinate Judge's Court, Kottayam, it emphatically admitted in so many words that it form part of Malankara church and first plaintiff has interest over Malankara church (Para 50 of written statement in O.S.148/1975). The entire contentions in that written statement reveal the very fact that first plaintiff and defendants are part of erstwhile patriarch faction. First plaintiff and its vicars did not raise the vital contention that they are part of a unique church not belong to Catholicose or patriarch faction in that written statement. The averments in the written statement filed in O.S.148/1975(re-numbered as O.S.72/1977 on the file of Additional District Court, Ernakulam) reveal the fact that present defence version is only an attempt to evade from the verdict of Hon'ble

Supreme Court in K.S. Varghese case. Though, the counsel for 4th and 8th defendants vehemently argued before court that dismissal of O.S.148/1975 (re-numbered as O.S.72/1997 on the file of Additional District Court, Ernakulam) as plaintiffs not pressed that suit, resist present plaintiffs to file lis to tilt administration of first plaintiff church appears to be untenable in the light of verdict of K.S.Varghese case.

Counsel for 3rd and 6th defendants vehemently argued that if first plaintiff was erstwhile patriarch faction they ought to have amended constitution compiled in the year, 1958. Contention of defendants that as they did not amend constitution same reveals the fact that they are not belong to patriarch faction appears to be flimsy ground. The irresistible materials draw a conclusion otherwise.

Counsel for plaintiffs relied on judgments in RFA No. 200/2019, 110/2019, 131/2011, 427/2003, 135/2019, 236/2014, 546/2019, 541/2019, 197/2019, A.S.260/2019, RFA 677/2010, RP 406/2020 to reinforce their contention to adjudge present lis without taking evidence in the light of K.S.Varghese case. On the other hand counsel for 4th and 8th defendants tried to distinguish aforesaid verdicts to adjudge present lis after taking evidence.

23. The provisions aforementioned and conducts only reveal the very fact that first plaintiff church is the part of Malankara church and defendants are part of erstwhile patriarch faction. Various contentions projected including non acceptance of 1934 Constitution after culmination of representative litigations is an attempt to evade from the clutches of dictum laid down in ***K.S. Varghese v. St.Peter's & Paul's Syrian Orthodox Church & ors.(2017) 15 SCC 333)***.

24. On over all consideration of entire materials placed before the court, I am of firm opinion that whole contentions projected by defendants in the lis are new version of core issues adjudged as per terms of the verdict passed by Hon'ble Supreme Court in ***K.S. Varghese v. St.Peter's & Paul's Syrian Orthodox Church & ors. (2017 (15) SCC 333).*** Hence, it is not at all necessary to settle issues under Order XIV CPC and record evidence to adjudge already adjudged controversy by Hon'ble Supreme Court. But the reliefs sought by plaintiffs are liable to be allowed in the bright light of verdict in K.S. Varghese case. Defendants are precluded from raising contentions already adjudged finally by court apex. Point No.1 found accordingly.

In the result, suit decreed as per the terms of verdict in ***K.S. Varghese v. St.Peter's & Paul's Syrian Orthodox Church & ors.(2017) 15 SCC 333).*** as follows:-

(1) First defendant is hereby directed to convene general body of first plaintiff church in compliance with provisions of 1934 Constitution to elect trustees and managing committee and defendants are further directed to deliver possession of properties of first plaintiff church and its institutions to the trustees and committee thus elected.

(2) Defendants 2 to 4 are hereby directed to render accounts of first plaintiff church to their successors.

(3) Defendants are further directed to hand over keys of first plaintiff church and its institutions to second plaintiff and trustees elected under 1934 Constitution of Malankara Orthodox Syrian Church.

(4) Defendants are hereby restrained by decree of permanent prohibitory injunction from Interfering with administration of first plaintiff church except as otherwise provided in 1934 Constitution.

(5) Considering nature of suits there is no order as to costs.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 18th day of September, 2020.

Sudheesh Kumar S,
Addl. Sub Judge.

APPENDIX - Nil

Id/-
Addl. Sub Judge

Copied by:
Compared by:

Sudheesh Kumar S,
Addl. Sub Judge.

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A. 911/20

K-S-C
O.S. 7/2019
Copy of Judgment

Sub Court, Kottayam

1. Year & No. of the suit/ other proceedings : O.S. 7/2019
2. Name of the applicant: Advn. M.C. Seemiah
3. No. & Date of the application: A.911/20, 18.9.
4. Date of calling for stamp papers. 25.9.20
5. Date of production of papers. 25.9.20
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